

Georg Gewiese
- Lawyer -

(13a) Unterlauer b. Coburg 115
Tele: Coburg 2242

O u t l i n e

concerning Law No. 56 of the American
Military Government.

P r e a m b l e :

The Law No. 56 of Military Government for the American zone of Germany and the corresponding laws of the British and French Military Governments concern a line of justice which had been discussed a long time ago already in Germany too.

Together with the introduction of the freedom of trade, there was raised everywhere, in France, e.g., immediately after the revolution of 1789, the claim for an efficient protection from unfair competition. The French jurisdiction was based upon Article No. 1382 of the Code Civil, a general clause, which seemed to be applicable to unfair competition as well. The American, English, Italian, Belgian jurisdiction as well as that one of Switzerland, too, at first was based upon already existing general laws in their fight against unfair methods in competition. (Rosenthal, Handbuch der Staatswissenschaften 1905, p. 869 and following). German jurisdiction in this line only was developed after the law concerning unfair competition of 1896. At that time they agreed in Germany that the right of acquisition and keeping of customers must find its limit there, where the freedom of the connections between the tradesman and the customers is encroached upon, where the free will of the consumer to become or to remain a customer is cancelled. It, then already, had been pointed out that persons cannot be forced to become a consumer of goods of certain tradesmen by fraud only, but by violence and threat as well. By this, their own free will is cancelled and by this the meaning of the word customer is destroyed. (Lobe UWG 1896, p. 10, 20).

In spite of this old, fundamental knowledge, which entirely agreed with the Anglo Saxon antitrust jurisdiction, there had not been any development of legislation and jurisdiction which could be compared with the American antitrust jurisdiction. The reasons for this shall not be discussed here. It is important, however, that during discussions that took place in Germany more than 50 years ago already, before and after the publication of the first law concerning unfair competition, all limitations of the free will of the consumers, not only by fraud but by all other means, too, had been

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looked upon as being unfair. During the nineties already there had been raised claims in Germany in numerous meetings of representatives of the small and medium tradesmen, which concerned a limitation and prevention of the auxiliary means of the great capital. (Dr. Kahn UWG 1896, p. 2). Contrary to these claims there then prevailed the point of view that the jurisdiction of competition only wanted to eliminate the unfair competition and not the so-called "uncomfortable" competition, and that it still was a question whether it is the duty of the State to support the small and medium enterprises in their economic fight against the great ones.

If during the last decades there had not been raised any claim on a large scale for the creation of an antitrust legislation by the part of the Germans (except the Regulation concerning Trusts in 1923) this is caused especially by the fact that the German economic life in general took a quite other development than e.g. the American one and that the highly developed German administration of justice in the line of the right of competition prevented many excrescences, which in America only could be removed by means of the antitrust legislation. In Germany there never appeared an agglomeration of economic power to such an extent as it had been the case in the United States and which, according to this, started the reaction of the legislation against the forming of trusts very early already. These agglomerations in America had been favoured especially much by the trusteeships, which are not known to our laws of today, being a legal form that, actually, has its origin in the old German right, but which had been abolished with the reception of the Roman right in Germany.

The want of a legislation and jurisdiction which secure the free action of every tradesman cannot be refused. At the time being the freedom of the individual is endangered not only in the political but in the economical sphere also. On the one side of the world, socialistic or, better, communistic planned economy led to immense economic bodies of State capital, to agglomerations of economic power which by far surmount the beginnings which began in Germany during the National Socialistic rule with the Hermann-Goering-Works etc. These mammoth constructions of the State capital are uniformly managed and this development in Eastern Europe led after a short time already to a general pauperization of the masses of the population. Such as the Eastern dictators like to claim that they represent the true democracy, but actually represent the extreme contrary, they also pretend to have created the true Socialism, while, actually, they made appear an atrociously hypertrophied capitalism, and, hand in hand with this, came to the restriction of all freedom of the individual. With regard to this development, words like Socialism, Capitalism, and Democracy vastly lost their meaning and today there are nothing but slogans, which are subject to different interpretations.

It shall not be examined in how far all planned economy carries in itself the bud for such a development. It is certain, however, that it corresponds with a law of nature that contrasts contact each other or, in other words, the farther we got to the West, the nearer we come to the East,

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that total Socialism means the same as total Capitalism, that total Freedom leads to total Unfreedom.

Thus, if we have the desire to keep our freedom up, if we want the not hindered competition of free tradesmen, then we must rein in such excrescences of free action which, according to the law of nature, will produce the contrary of freedom. We should be acquainted especially well with this train of thought, which only seems to be paradoxical, as it had been a German philosopher who, 150 years ago, said the wellknown words that freedom does not mean unrestraint but willing obligation.

Thus, the Law No. 56 of Military Government proves itself to be not - as it is often looked upon - a handcuff by the victors but a base for the development of a German legislation and jurisdiction on this line of administration of justice, so authoritative for our future political and economic life. It is the task of our jurisdiction to rank the regulations of this law into our law concerning competition and to develop it according to the German conditions. We cannot and will not resign from taking ideas from the American jurisdiction. Therefore this work, too, will occupy itself thoroughly with the state and the development of this American jurisdiction.

But the political importance due to the principles of freedom of the economic action brings the thought with it, to come to an agreement in this question between all countries with Western orientation by way of international understandings. The protection of the trade by the law has already often made a breach for the freedom of economic action by international agreements. May the warning example of the East lead to a common line on this sphere of jurisdiction among all those nations who have written upon their banners the keeping up of freedom.

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